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CHAPTER 60.

OF PROBATE BONDS AND THE PROSECUTION OF THEM.

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SEC. 1. All bonds required by law to be taken in, or by order of the probate court, shall be for such sum, and with such sureties as the judge of probate shall direct, except when the law otherwise prescribes; and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the judge of probate, except where they are required by law to be taken to the adverse party.

Probate bonds, how taken.

SEC. 2. A suit may be brought on the bond of any executor or administrator, by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

When suit may be brought by creditor on bond of executor.

SEC. 3. Such a suit may be brought by any person as next of kin to recover his share of the personal estate, after a decree of the probate court declaring the amount due to him, if the executor or administrator shall fail to pay the same when demanded.

When suit may be brought by next of kin.

SEC. 4. When it shall appear on the representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee or other person aggrieved by such mal-administration, to bring an action on the bond.

When court may authorize any person interested to bring suit.

SEC. 5. Whenever an executor or administrator shall refuse or omit to perform any order or decree, made by a judge of probate having jurisdiction, for rendering an account, or upon a final settlement, or for the payment of debts, legacies, or distributive shares, such judge of probate may cause the bond of such executor or administrator to be prosecuted, and the moneys collected thereon shall be applied in satisfaction of such order or decree, in the same manner as such moneys ought to have been applied by such executor or administrator.

When executor, &c., shall refuse, to perform order court may cause bond to be prosecuted.

SEC. 6. In all suits upon such bonds, the writ and proceedings shall be in the name of the judge of probate; and when the action is brought for the benefit of any particular person, as creditor next of kin, or legatee, as provided in this chapter, the execution shall express that it is for the use of such creditor next of kin or legatee, and in such case, the person for whose use the action is brought, shall be deemed the plaintiff.

Suits on such bonds to be in the name of judge of probate, and execution how to issue.

SEC. 7. On the application of any person authorized by this chapter, to commence a suit on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall; thereupon,

When judge may grant permission to sue bond.

CONVEYANCE OF LANDS BY EXECUTORS, &c.

furnish to the applicant, on his paying the legal fee, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

Judgment in suit for benefit of particular persons.

SEC. 8. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought for the benefit of any particular person, the court shall award execution for the amount due to such person, with costs of suit.

Judgment, &c., in other cases.

SEC. 9. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought by the judge of probate for any breach thereof, in not performing any order or decree of the judge of probate, as mentioned in the fifth section of this chapter, execution shall be awarded for the full value of all the estate of the deceased, that shall have come to the hands of such executor or administrator, and for which he shall not have satisfactorily accounted, and for all such damages as shall have been occasioned by his neglect or mal-administration, with costs of suit.

Disposition of moneys collected.

SEC. 10. All moneys received on any execution issued on a judgment in favor of the judge of probate, as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there be any, or to such person other than the defendant therein, as shall then be the rightful executor or administrator, and such moneys shall be assets in his hands, to be administered according to law.

When scire facias may be prosecuted, &c.

SEC. 11. Any person who may be injured by the breach of the conditions of such bond, may afterwards, from time to time, sue out and prosecute a scire facias in his own name, on the judgment which may have been rendered for the penalty of such bond, and in such scire facias, shall assign and set forth the breaches on which he relies, and may therein recover such damages as he may prove, with costs.

By whom claims for damages for breach of condition may be prosecuted, &c.

SEC. 12. Claims for damages on account of the breach of the conditions of any bond, may be prosecuted by any executor, administrator, or guardian, in behalf of those he may represent, in the same manner as by persons living and of full age; and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.

CHAPTER 61.

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